MALAYSIAN REPORTS

Lim Boon Peng v United Orient Leasing Co Bhd

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-54-1990
LEE HUN HOE CJ (BORNEO), MOHAMED AZMI AND GUNN CHIT TUAN SCJJ
23 NOVEMBER 1990

Bankruptcy — Bankruptcy notice — Claim in bankruptcy notice quantified up to date prior to date of issue of notice — Whether notice valid — Bankruptcy Act 1967, s 3(1)(i)

The judgment creditor in this case had by a bankruptcy notice dated 8 June 1988 demanded payment within seven days of the specified sum of $47,449.45. The sum was quantified up to 31 March 1988 but the notice included further particulars of an unspecified sum on interest up to the date of full realization or date of the adjudicating and/or receiving order. The learned judge made a receiving and adjudicating order against the judgment debtor. The judgment debtor appealed on the ground that the bankruptcy notice was invalid and a nullity and therefore the creditor's petition should have been struck out.

Held, dismissing the appeal:

(1) Even if the unspecified sum on further interest from 1 April 1988 had not been waived or abandoned by the judgment creditor, the bankruptcy notice would have remained valid, since the unspecified sum was never included in the amount claimed in the body of the bankruptcy notice.

(2) In this case the learned judge had allowed an application by counsel for the creditor to waive the claim for interest after 31 March 1988, thereby limiting the demand on payment of interest only up to that date.

(3) In the circumstances the bankruptcy notice in this case was not bad in law merely because the quantified sum demanded in the body of the notice was as at 31 March 1988 and not as at the date of the issue of the notice on 8 June 1988.

[Bahasa Malaysia summary

Pemiutang penghakiman di dalam kes ini telah meminta melalui notis kebankrapan bertarikh 8 Jun 1988 pembayaran dalam masa tujuh hari jumlah wang yang disebut iaitu $47,449.45. Jumlah wang itu dikira hingga 31 Mac 1988 akan tetapi notis itu mengandungi butir-butir jumlah wang yang tidak diperincikan mengenai bunga hingga tarikh dijelaskan hutang itu atau tarikh perintah penerimaan atau perintah penghukuman. Hakim yang arif telah membuat perintah penerimaan dan perintah penghakiman terhadap penghutang penghakiman. Penghutang penghakiman telah membuat rayuan atas alasan bahawa notis kebankrapan itu adalah tak sah dan terbatal dan oleh kerana itu petisyen pemiutang seharusnya dibatalkan.

Diputuskan, menolak rayuan itu:

(1) Biarpun jumlah yang tidak diperincikan mengenai bunga tambahan dari 1 April 1988 tidak dimaaf atau dilepaskan oleh pemiutang penghakiman, notis kebankrapan itu masih sah, oleh kerana jumlah yang tidak diperincikan itu tidak dimasukkan di dalam jumlah yang dituntut di dalam bahagian utama notis kebankrapan itu.

(2) Di dalam kes ini hakim yang arif telah membenarkan permohonan oleh peguam bagi pihak pemiutang memaafkan bunga selepas 31 Mac 1988 dan dengan itu menghadkan tuntutan bunga hanya hingga tarikh itu.

(3) Di dalam keadaan itu notis kebankrapan di dalam kes ini tidaklah terbatal di sisi undang-undang cuma kerana jumlah yang diperincikan di dalam bahagian utama notis itu adalah pada tarikh 31 Mac 1988 dan bukan pada tarikh notis itu dikeluarkan iaitu 8 Jun 1988.]

Cases referred to

1 *Low Mun* v *Chung Khiaw Bank Ltd* [1988] 1 MLJ 263 (refd)
2 *Ghazali bin Mat Noor* v *Southern Bank Bhd & Ors* [1989] 2 MLJ 142 (refd)

Legislation referred to

Bankruptcy Act 1967 s 3(1)(i)

Appeal from: Bankruptcy Kod D1-43-3881-88 (High Court, Kuala Lumpur)

SA Lingam for the appellant.
Benjamin Dawson for the respondent.

Cur Adv Vult

Mohamed Azmi SCJ (delivering the judgment of the court): This was an appeal against the decision of Anuar J given at Kuala Lumpur on 8 February 1990, whereby the court made a receiving and adjudicating order against the appellant.

The only ground of appeal was that the bankruptcy notice dated 8 June 1988 and issued on the same date by registration no 3881 of 1988, was invalid and a nullity ab initio, and consequently the creditor's petition should have been struck out. Both here and in the court below, the appellant relied on the decision of this court in *Low Mun* v *Chung Khiaw Bank Ltd*[1] which held that the demand for payment in the notice must not only be quantified but also be the correct sum owing as at the date of notice. The learned judge considered the authority, and found that it did not assist the judgment debtor.

In the body of the bankruptcy notice, the judgment creditor (respondent) had demanded payment within seven days, a specified sum of $47,449.45. In the paragraph between the date of the bankruptcy notice (8 June 1988) and the date of issue, the following particulars were supplied to show how the claim was arrived at:

Judgment sum	$40,992.64
Add: Interest at 0.065% per day on the sum of $33,215.00 from 1 January 1986 to 28 May 1987 (179 days)	$ 3,864.57
Add: Interest at the rate of 8% pa on the sum of $33,215.00 from 29 May 1987 to 21 March 1988 (308 days)	$ 2,242.24
Add: Cost	$ 350
Amount owing as at 31 March 1988	$47,449.45

As for the period after 31 March 1988 the following further particulars of unspecified sum on interest were appended:

> Plus further interest thereon at the rate of 8% pa on the sum of $33,215 from 1 April 1988 to date of full realization or date of adjudicating and/or receiving orders.

According to the learned judge in his grounds of judgment, on the date when the creditor's petition was heard, he had allowed an application by counsel for the creditor to waive the claim for interest after 31 March 1988, thereby limiting the demand on payment of interest only up to that date.

In our view, any reasonable person reading the bankruptcy notice should be left in no doubt at all that the amount which the appellant had to pay to avoid the commission of an act of bankruptcy under s 3(1)(i) of the Bankruptcy Act 1967, was the quantified sum of $47,449.45. There was no room for dispute that on 8 June 1988, the said sum claimed in the body of the bankruptcy notice was capable of being made the subject of execution. The notice was clear and unequivocal. We were therefore unable to appreciate the argument of counsel for the appellant that the bankruptcy notice was bad in law. The fact that other information was given in the notice would not render the notice bad in law, so long as the amount demanded for payment within the seven days had been quantified and was unequivocal. We were of the view that even if the unspecified sum on further interest from 1 April 1988 had not been waived or abandoned by the judgment creditor, the bankruptcy notice would have remained valid, since the unspecified sum was never included in the amount claimed in the body of the bankruptcy notice.

Much had been said about the requirement that the amount quantified in the body of the notice must be the correct sum owing as at the date of the bankruptcy notice. The question in this appeal was, was a sum less than the amount that should be actually owing as at the date of the issue of the notice, an incorrect sum for the validity of the notice? Obviously not. It could be a lesser amount than the sum actually owing and capable of being made the subject of execution at the date of issue of the notice. In the present case, the quantified sum demanded for payment within seven days (up to 31 March 1988), though less than the amount actually owing on the date of issue of the bankruptcy notice (8 June 1988), was not a fatal defect. Where the date of issue of the notice by the registrar is the same as the date named in the notice by the creditor, which is the case here, then the maximum amount of interest accruing due that the judgment creditor could possibly quantify in the body of the bankruptcy notice was obviously the amount owing as at the date of issue of the notice. This is envisaged by this court in *Ghazali bin Mat Noor* v *Southern Bank Bhd & Ors*[2] at p 143. In our opinion, where it would be possible to quantify the interest due up to the date of the issue of the bankruptcy notice, the solicitors for the judgment creditor in the preparation of the notice, could claim for their clients the quantified maximum sum in advance. However, if they elected for some reason to claim for a lesser sum, or where it is not possible to quantify the maximum sum, it could not by itself render the bankruptcy notice bad in law for the simple reason that it could not possibly affect the correctness of the sum actually owing as at the date of issue of the bankruptcy notice. As far as interest on judgment debt is concerned, the correct sum owing as at the date of issue of the bankruptcy notice (which in the present case was the same as the date named in the notice) could therefore either be the maximum quantified sum or any lesser sum that existed at an earlier date as a judgment debt and available for bankruptcy purposes.

In the circumstances, the bankruptcy notice in this case was not bad in law merely because the quantified sum demanded in the body of the notice was as at 31 March 1988 and not as at the date of issue of the notice, on 8 June 1988. For reasons given above, we had dismissed this appeal with costs.

Appeal dismissed.

Solicitors: *A Lingam & Co; Nik Hussain & Partners.*

Reported by *Prof Ahmad Ibrahim*

Geh Cheng Hooi & Ors v Equipment Dynamics Sdn Bhd and other appeals

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NOS 02-32 OF 1989, 02-33 OF 1989 AND 02-38 OF 1989
HARUN HASHIM, MOHAMED YUSOFF AND GUNN CHIT TUAN SCJJ
21 NOVEMBER 1990

Trusts and Trustees — Creation of trust — Commercial relationship — Sale of goods by concessionaires or consignors in department store — Proceeds of sale received by department store — Whether trust created — Whether moneys can be traced — Stock in department store sold by liquidators — Whether proceeds of sale subject of trust — Distribution of moneys comprised in trust — Onus of proof

Trusts and Trustees — Express trust — Trust by operation of law — Commercial relationship — Whether trust can be imputed — Circumstances to be considered

In this case the Emporium Supermarket Group comprised 29 separate companies which were running a total of 60 operating outlets. All these outlets were in the business of either supermarket and/or department stores and some of them were also carrying out fast food businesses, restaurants, eateries and confectioneries. The business was carried out through concessionaire and consignor arrangements and also through ordinary supplies on the usual credit basis. Space was leased out in department stores and goods were displayed and sold there. The department stores were concerned with the collection of